

Remarks

Reconsideration of this patent application is respectfully requested, particularly as herein amended.

The Office Action of August 12, 2003, initially confirms entry of the substitute specification submitted with the Reply which was filed in this matter on May 30, 2003, and acknowledges applicant's election of subject matter for examination in this patent application.

Claims 15 and 26 to 30 are next rejected under 35 U.S.C. §112, second paragraph, "as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention". In reply, claims 10 and 26 have been amended to positively claim recited elements, overcoming the stated rejection of claims 15 and 26 to 30 under 35 U.S.C. §112, second paragraph.

Claims 10 to 14, 26 and 27 are rejected under 35 U.S.C. §102(b) as being anticipated by a patent to McSpadden (No. 5,067,900). Claims 10 to 15 and 27 to 30 are rejected under 35 U.S.C. §102(b) as being anticipated by a patent to Riazi (No. 5,215,461). Claim 29 is additionally rejected under 35 U.S.C. §103(a) as being unpatentable over a proposed combination of Riazi with a patent to Berk et al. (No. 6,159,009).

Both McSpadden and Riazi disclose devices for applying a quantity of a filling material, such as gutta percha, to a root

canal obturator. In each case, a syringe-like structure is provided for containing the gutta percha. The syringe-like structure is generally comprised of a barrel for receiving the gutta percha and having an opening for receiving the root canal obturator, and a movable plunger which is associated with the barrel for purposes of delivering a quantity of the gutta percha contained in the barrel to the root canal obturator inserted in the opening of the barrel.

In each case, the barrel which contains the gutta percha has a capacity which exceeds a single dose of the filling material. Riazi states, at lines 50 to 52 of column 4, that "[t]he appliance 20 is filled with a quantity of thermoplastic material 29, on the order of several cc's for a plurality of applications" (emphasis added), and both McSpadden and Riazi illustrate barrel structures having a significant capacity for receiving the filling material (note, for example, Fig. 2 of McSpadden and Figs. 9 and 10 of Riazi). Riazi further suggests that such additional filling material is necessary for proper operation of the disclosed material-transferring structures in that the movable plunger associated with the barrel of the container is used not only to deliver a quantity of the gutta percha to the inserted root canal obturator, but also to expel the inserted end of the root canal obturator from the opening in the barrel (see Riazi, at lines 40 to 44 and lines 51 to 53 of column 2).

This is to be distinguished from applicant's claimed

apparatus for providing a filling material, for introduction into a canal of a tooth using a root-canal instrument, which comprises a recess, and a cartridge containing the filling material which is received in the recess, wherein the cartridge contains a dose of the filling material which approximately corresponds to an amount of the filling material which is needed to treat and fill one single canal.

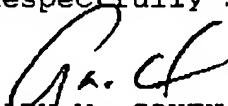
This is also to be distinguished from the vessel structure which is recited in dependent claim 29, and which is formed as a cylinder having an integral bottom at one end and a sealed closure at its opposite end. As the Examiner correctly notes, Riazi does not disclose a container for the filling material which has an integral bottom at one end and a sealed closure at its opposite end. The patent to Berk et al. is cited to illustrate such structure, however, it is submitted that the teachings of Berk et al. are not properly combined with the teachings of Riazi (nor McSpadden). Riazi (as well as McSpadden) specifically provides a syringe-like structure for containing the gutta percha having a movable plunger which is associated with an open-ended barrel for purposes of delivering a quantity of the gutta percha contained in the barrel to the root canal obturator inserted in the opening of the barrel. There is no suggestion that a closed structure, such as is shown in Berk et al., or otherwise, would satisfactorily operate to transfer gutta percha to a root canal obturator, for application to an extirpated root canal, as distinguished from the transfer of an amalgam directly

to an excavation in a tooth. This is particularly so when considering that the amalgam disclosed in Berk et al. is light-activated, and accordingly, is not subjected to any heating, as distinguished from the gutta percha disclosed by Riazi (and McSpadden), which requires heating for activation.

Accordingly, it is submitted that applicant's claims are neither anticipated by the patents to McSpadden or Riazi, nor unpatentable over the proposed combination of Riazi and Berk et al., even if made.

In view of the foregoing, it is submitted that elected claims 10 to 15 and 26 to 30, as well as claims 16 to 25, which are drawn to a non-elected species of the present invention, are in condition for allowance. To this end, a spelling error noted in dependent claim 23 has also been corrected. Corresponding action is earnestly solicited.

Respectfully submitted,

  
GARY M. COHEN, ESQ.  
Reg. No. 28,834  
Attorney for Applicant  
Tel.: (610) 975-4430

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office (Fax No. (703) 872-9306) on: November 12, 2003.

Date: 11/12/03

  
\_\_\_\_\_  
Gary M. Cohen, Esq.